



ANDREW M. CUDMD  
Governor

# Department of Health

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

February 23, 2016

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Cheryl Ackerman, M.O.

[REDACTED]

David Oulst, Esq.  
NYS Department of Health  
ESP-Coming Tower-Room 2512  
Albany, New York 12237

Kevin D. Portar, Esq.  
Vigorita, Barker, Porter & Patterson, LLP  
115 East Stevens Avenue  
Suite 206  
Valhalla, New York 10595

**RE: In the Matter of Cheryl Ackerman, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.16-043) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (l), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Review Center  
150 Broadway – Suite 510  
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

[Redacted]  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER  
OF  
CHERYL ACKERMAN, M.D.

DETERMINATION  
AND  
ORDER

X      BPMC #16-043

A hearing was held on December 16, 2015, at the offices of the New York State Department of Health ("Department").<sup>1</sup> Pursuant to Section 230(10)(e) of the Public Health Law ("PHL"), **WILLIAM TEDESCO, M.D.**, Chairperson, **DENNIS P. ZIMMERMAN, M.S., CRC**, and **ROBERT CATALANO, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MacKILLOP-SOLLER, ESQ.**, **ADMINISTRATIVE LAW JUDGE ("ALJ")**, served as the Administrative Officer.

The Department appeared by David Quist, Esq. A Notice of Referral Proceeding and Statement of Charges dated May 13, 2015 and Amended Statement of Charges dated November 25, 2015, were served upon Cheryl Ackerman, M.D. ("Respondent").<sup>2</sup> The Respondent appeared at the hearing and was represented by Kevin D. Porter, Esq., from the law firm Vigorito, Barker, Porter & Patterson, LLP. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charge that the Respondent committed

<sup>1</sup> The location of the hearing was 150 Broadway, Suite 510, Menands, New York.

<sup>2</sup> The Amended Statement of Charges dated November 25, 2015, replaces and supersedes the Statement of Charges. [T. 10]. Jurisdiction was established at the hearing by the Department's evidence referencing personal service of the Statement of Charges on the Respondent at her residence. [Ex. 2, 3].

professional misconduct, in violation of Education Law ("Educ. Law") § 6530(9)(d), such that the penalty of a stayed suspension and probation, with conditions and limitations, is appropriate.

## BACKGROUND

This proceeding was commenced pursuant to PHL § 230(10)(p), which provides for a hearing with circumscribed issues when a licensee is charged solely with a violation of Education Law § 6530(9). In such cases, a licensee is charged with misconduct based upon a federal criminal conviction, or a conviction in New York State, or a conviction in another state where the conduct would constitute a crime in New York State, or an administrative adjudication of misconduct in another state regarding conduct that would amount to professional misconduct if committed in New York State. Respondent is charged here with professional misconduct pursuant to Educ. Law § 6530(9)(d) by having her "license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

In an Order of Automatic Suspension dated February 21, 2012, the New Jersey State Board of Medical Examiners ("New Jersey Board") found that the Respondent violated the terms of a Private Letter Agreement ("Agreement"), which she entered into with the New Jersey Board to resolve professional misconduct allegations. Under the Agreement, the Respondent was obligated to comply with the recommendations of the New Jersey Professional Assistance Program ("PAP") to provide psychiatric reports and to undergo an independent psychiatric evaluation, which she failed to do. In a Consent Order effective on November 16, 2015, the New Jersey Board reinstated Respondent's license to practice medicine, subject to a number of conditions and limitations. [Ex. A, 1, 5].

Whether the underlying conduct resulting in the Consent Order constitutes misconduct hinges on whether it would have been professional misconduct if committed in New York. The Department charges that had Respondent's conduct occurred in New York, it would have constituted practicing the profession while impaired by a mental or physical disability, a failure to comply with an order, a failure to file a report as required by the Department, and violating a term or condition placed on a license, as defined in Educ. Law §§ 6530(7), 6530(15), 6530(21), and 6530(29), respectively. [Ex. 1].

### FINDINGS OF FACT

The Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits ["Ex."] or transcript pages ["T."]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Cheryl Ackerman, M.D., the Respondent, was authorized to practice medicine in New York on July 23, 1987, by the issuance of license number 171040 by the Educ. Department. [Ex. 1, 4].
2. In an Order of Automatic Suspension effective on February 21, 2012, the New Jersey Board imposed disciplinary action upon the Respondent resulting from her violation of the terms of an Agreement she signed with the New Jersey Board on October 24, 2011. In that agreement, the Respondent agreed to comply with the requirements of the PAP by participating in regular psychotherapy sessions with a PAP therapist, submitting treatment reports and a psychiatric evaluation to the PAP, and completing a PAP independent psychiatric evaluation. [Ex. 1, 5].
3. In a Consent Order effective on November 16, 2015, the New Jersey Board reinstated

the Respondent's license to practice medicine in New Jersey, subject to conditions, which include completion of all necessary requirements to reinstate her medical license. Once reinstated, the Respondent is limited to practicing only under the employ of another physician approved by the New Jersey Board for a period of two years, after which she may seek approval from the New Jersey Board to engage in solo practice. Respondent is also required to undergo a fluoro-deoxyglucose positron emission tomography scan ("FDG-PET") and Magnetic Resonance Imaging ("MRI") of her brain and to follow-up with her treating psychologist, Ben J. Susswein, Ph.D., regarding her fitness to practice medicine, and follow-up with a neurologist. [Ex. A, 5].

#### VOTE OF THE HEARING COMMITTEE

##### FIRST SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge that the Respondent committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

#### CONCLUSIONS OF LAW

The Department presented evidence to show that the Agreement entered into by the Respondent and the New Jersey Board on October 24, 2011 was the result of patient care complaints handled by the New Jersey Board contemporaneous with psychiatric diagnoses the Respondent received of adjustment disorder, personality disorder, and depressive disorder. The evidence also showed that the Respondent failed to comply with the terms of the Agreement she signed and entered into with the New Jersey Board by failing to undergo an independent psychiatric evaluation and by not providing psychiatric reports to the PAP. Troubling to the Hearing Committee is that the Respondent acted in this manner despite executing the Agreement in 2011 and stipulating to the

potential outcome of automatic suspension and other disciplinary action should she fail to comply with any term of the Agreement. [Ex. 5].

Disconcerting to the Hearing Committee was the Respondent's depiction of the underlying administrative action in New Jersey as a "misunderstanding," triggered by "minor patient complaints." Needless to say, the Hearing Committee did not believe that the evidence supported this characterization. The Department's evidence demonstrated that against the backdrop of the Respondent's history of non-compliance with the New Jersey Board's directives, the Respondent is in the process of requesting significant adjustments and changes to the conditions she recently agreed to as part of the Consent Order. Instead of explaining her efforts towards complying with the requirements imposed on her by the New Jersey Board, the Respondent described them as "impossible conditions" that were "harsh" and "for no reason." In fact, even though the Respondent agreed to undergo a FDG-PET scan, she stated at the hearing that she cannot complete the "whole thing" due to a dye sensitivity and she raised concerns that such a scan is "not really indicated." Additionally, she testified to her goal of re-opening her own practice out of her home or working at a Veteran's Administration Hospital, despite the limitation on her medical license in New Jersey to practice only under the employ of another physician. [T. 47, 51, 54-55, 58-62, 70, 74].

The Committee was particularly concerned that the Respondent was in complete denial that she suffered from any impairment, despite Dr. Richardson's testimony, as the Respondent's treating psychiatrist, that she doesn't have any "significant" psychiatric issues preventing her from practicing as a physician. At the time of his independent evaluation of the Respondent on August 21, 2015, which was conducted for the purpose of assessing the Respondent's fitness to practice medicine, Mijail D. Suryya, M.D., Ph.D, recommended that the Respondent undergo, "at minimum," annual follow-ups with a neurologist, and an MRI of the brain to evaluate any "demyelinating or

"inflammatory process" within "the next 12 months and thereafter as deemed appropriate." He also recommended "repeat neuropsychological testing" should there exist any "new concerns about cognition." Although the Respondent's medical witnesses described her clinical decision making as competent and qualifications as excellent, the Hearing Committee considered that the Respondent has not practiced in a clinical setting in at least four years and within that time frame, the underlying New Jersey administrative action ensued. [T. 20-23, 28, 29, 43-44].

The Hearing Committee unanimously concludes that the Findings of Fact, except as defined under Educ. Law § 6530(15), and Specification of Misconduct contained in the Statement of Charges were established by a preponderance of the evidence. Had the Respondent's conduct occurred in New York, it would have constituted a violation of terms and conditions imposed upon her medical license, practicing while impaired by a mental disability, and a failure to file a report required by the Department, thereby constituting professional misconduct as defined in Educ. Law §§ 6530(29), 6530(7), and 6530(21), respectively. Although the evidence demonstrated that the Respondent violated the terms of the Agreement, which was a private document filed with the New Jersey Board and not a public record, it did not show a violation of a board order, as defined in Educ. Law § 6530(15).

The Hearing Committee concluded that pursuant to PHL § 230-a(2)(a), the Respondent's license should be suspended for a period of three years. This suspension, however, is stayed in whole. The Respondent should also be placed on probation for a term of three years, pursuant to the Terms of Probation attached hereto as Appendix II. The period of the probation shall be tolled while the Respondent is not engaged in the practice of medicine within New York State. Should the Respondent decide to return to practice medicine in New York, she must first provide 90 days' notice of such intent to the director of the OPMC. The Hearing Committee considered the Department's

recommendation that the Respondent be subject to an assessment should she decide to return to practice medicine in New York State and determined that in light of the New Jersey directives pursuant to the Consent Order, additional assessments are not required.

## ORDER

### **IT IS HEREBY ORDERED THAT:**

1. The specification of professional misconduct, as set forth in the Statement of Charges (Appendix 1), is **SUSTAINED**;
2. Respondent's license to practice medicine is suspended for three years and is stayed in its entirety;
3. Respondent is placed on probation for a period of three years, pursuant to the Terms of Probation (Appendix II). The period of probation shall be tolled while the Respondent is not engaged in the practice of medicine in New York State. The Respondent must provide 90 days' notice should she decide to return to New York to practice medicine and shall recommence the practice of medicine within New York State only upon the approval of the director of the OPMC.
4. Respondent must comply with the terms of this Determination and Order and all the Terms of Probation attached to this Determination and Order; and
5. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York  
February 11, 2016

[REDACTED]  
William Tedesco, M.D.  
Chairperson

Dennis P. Zimmerman, M.S., CRC  
Robert Catalano, M.D.

To:

Cheryl Ackerman, M.D.  
[REDACTED]

David Quist, Esq., Attorney for Petitioner  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, New York 12237

## *APPENDIX I*

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

CNELRY ACKERMAN, M.D.  
CO-12-07-3704-A

NOTICE OF

REFERRAL

PROCEEDING

TO: Cheryl Ackerman, M.D.

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 15<sup>th</sup> day of July, 2015, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2718.<sup>1</sup>

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

<sup>1</sup> For GPS purposes, enter "Menands", not "Albany".

EXHIBIT

1

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 180 Broadway, Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(e), you shall file written answers to each of the charges and allegations in the Statement of Charges, not less than ten (10) days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health, whose name appears below. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide, at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

**YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here \_\_\_\_\_

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time will result in the automatic denial of your request for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

**SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION  
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR  
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN  
ATTORNEY TO REPRESENT YOU IN THIS MATTER.**

DATED: Albany, New York

May 13, 2015

[REDACTED]  
**MICHAEL A. HISER**  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Jude B. Mulvey  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower - Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
CHERYL ACKERMAN, M.D.

AMENDED  
STATEMENT  
OF  
CHARGES

CHERYL ACKERMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 23, 1987, by the issuance of license number 171040 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 24, 2011, Respondent entered into a Private Letter Agreement with the New Jersey State Board of Medical Examiners ("New Jersey Medical Board") resulting from concerns including Respondent's physical and/or mental condition, her noncompliance with the New Jersey professional assistance program, her apparent denial of diagnoses by multiple professionals and the need to engage in counselling. The Private Letter Agreement permitted Respondent to continue to practice medicine but afforded the New Jersey Medical Board the ability to automatically suspend Respondent's New Jersey medical license upon notice of non-compliance with the Private Letter Agreement and permitted Respondent the opportunity for a hearing to challenge any resulting suspension. Further, the Private Letter Agreement required, among other things, that Respondent continue enrollment in the New Jersey Professional Assistance Program ("PAP"), meet with an approved therapist with reports to PAP, that Respondent follow all PAP



recommendations, the Respondent comply with Board requests for information and that Respondent enroll in and complete a course in medical office management.

B. On or about February 21, 2012, the New Jersey Medical Board automatically suspended Respondent's New Jersey medical license by Order of Automatic Suspension of License based upon Respondent's non-compliance with the October 24, 2011 Private Letter Agreement. More specifically, it was alleged that Respondent failed to provide the requested psychiatric reports to PAP and that she refused to undergo an independent psychiatric evaluation.

C. On or about November 13, 2015, Respondent entered into a Consent Order with the New Jersey State Board of Medical Examiners, which was filed on or about November 18, 2015. Pursuant to the terms of the Consent Order, Respondent's license was reinstated, subject to conditions including obtaining the required malpractice insurance or letter of credit, limitations on the setting in which Respondent may practice, a requirement that Respondent obtain a FDG-PET scan of her brain, submit to annual neurological examinations, continued treatment, and provision of reports regarding such treatment, examination, scans and Respondent's ongoing fitness to practice medicine.

D. The conduct resulting in the New Jersey Private Letter Agreement, Order of Automatic Suspension of License and Consent Order against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New

York state law:

1. New York Education Law §8630(7) (Practicing while impaired by mental and/or physical disability);
2. New York Education Law §8630(18) (Failure to comply);
3. New York Education Law §8630(21) (Failing to file a report required by the department of health or obstructing such filing); and/or
4. New York Education Law §8630 (29) (Violating a condition or limitation placed on a licensee)

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Ed.Law § 8530(g)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New

York state (namely N.Y. Eduo. Law § 8830(7), (15), (21) and (29)) as alleged in the facts  
of the following:

1. The facts in Paragraphs A, B, C and D.

DATE: November 25, 2015  
Albany, New York

[Redacted]  
Michael A. Hiser  
Deputy Counsel  
Bureau of Professional Medical Conduct

*APPENDIX II*

## TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and to governing law. Any act of professional misconduct by Respondent as defined by New York Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230 (10) or (19), or both.
2. Respondent shall remain in continuous compliance with all requirements of New York Educ. Law § 6502, including, but not limited to, the requirements that licensee register and continue to be registered with the New York State Educ. Department and that licensee pay all registration fees. Respondent shall not exercise the option provided in Educ. Law § 6502(4) to avoid registration and payment of fees.
3. Respondent shall comply with the terms and conditions of the Consent Order with the New Jersey Board dated November 16, 2015 and any extensions or modifications thereof. The Respondent shall provide written authorization for the New Jersey Board to provide the director of OPMC information related to the Respondent's compliance with the order.
4. The Respondent must provide 90 days' notice should she decide to return to New York to practice medicine, and she must obtain the approval of the director of the OPMC before recommencing the practice of medicine within New York State. The Respondent shall remain on probation for a period of three years, during which the Respondent's practice as a physician shall be subject to conditions imposed for a period of no less than three years. The minimum conditions shall include the following:
  - a. At the direction of the director of the OPMC, the Respondent shall submit to periodic interviews with, and evaluations by, a board-certified psychiatrist or other licensed mental health practitioner designated by the director of the OPMC. This practitioner shall report to the director regarding the Respondent's condition and the Respondent's fitness or incapacity to practice as a physician;
  - b. The Respondent's medical practice shall be supervised by a licensed physician ("practice supervisor") proposed by the Respondent and approved, in writing, by the director or the OPMC. The supervising physician shall be familiar with the Respondent's history of impairment and with the Order and its conditions. The supervising physician shall supervise the Respondent's compliance with the conditions of practice imposed by the order. The supervising physician shall be in a position to

regular observe and assess the Respondent's medical practice. The supervising physician shall oversee the Respondent's prescribing, administering, dispensing, inventorying and wasting of controlled substances. The supervising physician shall acknowledge willingness to comply with the supervision terms by executing the acknowledgment provided by the OPMC.

- i. The Respondent shall ensure that the supervising physician submits quarterly reports to the OPMC regarding the quality of the Respondent's medical practice, including whether diagnoses and treatments are appropriate, any unexplained absences from work, a representative sampling representing of at least five percent of the patients seen by the Respondent to determine whether the patients managed are in line with what is appropriate and proper, and certifying the Respondent's compliance with each condition imposed, and detailing, if applicable, the Respondent's failure to comply.
  - ii. The supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.
- c. The Respondent shall continue in treatment with a health care professional or program proposed by the Respondent and approved, in writing, by the director of OPMC, for as long as the health care professional determines it is necessary.
    - i. The Respondent shall ensure that the health care professional submits quarterly reports to the OPMC certifying that the Respondent is in compliance with treatment, or detailing the Respondent's failure to comply;
    - ii. The health care professional shall report to the OPMC immediately if the Respondent is non-compliant with the treatment plan or demonstrates any significant pattern of absences;
    - iii. The health care professional shall acknowledge willingness to comply with the reporting requirements with respect to treatment by executing the acknowledgement provided by the OPMC;

- d. The Licensee shall provide the director of the OPMC with, and ensure to keep current and effective, fully executed waivers of patient confidentiality concerning any prior or prospective evaluation and treatment records; these waivers shall comply with the requirements of federal confidentiality laws and regulations, including but not limited to: HIPAA, Public Law 104-191, et seq., and the laws governing confidentiality of substance abuse records, at 42 U.S.C. §§ 290dd-3 and ee-3 and 42 C.F.R., Part 2; and
  - e. The Respondent shall engage in the practice of medicine only under the employ of another physician approved by the director of the OPMC and shall not engage in solo practice absent approval from the director. The Respondent shall report to the Board the name and address of the physician with whom she is employed. This physician shall evaluate the Respondent's skills to practice medicine and report any concerns regarding the Respondent's practice to the director.
5. The terms set forth in paragraph (4) are the minimum probation terms related to fitness to practice to be imposed on the Respondent, and other terms may be added by the director of the OPMC. All compliance costs shall be the Respondent's responsibility.
6. In addition to the terms set out in paragraph (4) and (5), the Respondent shall also be subject to the following standard terms of probation:
- a. The Respondent's conduct shall conform to moral and professional standards of conduct and governing law;
  - b. Any civil penalty not paid by the Respondent by the prescribed date shall subject the Respondent to all legal provisions pertaining to debt collection, including the imposition of interest, late payment charges and collection fees, referral of the debt to the New York State Department of Taxation and Finance for collection, and the non-renewal of permits or licenses. [Tax Law § 171(270; State Finance Law § 18; CPLR § 5001; Executive Law § 32];
  - c. The probation period shall toll when the Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. The Respondent shall notify the director of OPMC, in writing, if the Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. The Respondent shall then notify the director again at least 14 days before returning to active practice. Upon the Respondent's return to active practice in New York State, the probation period shall resume and the Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the director may impose as reasonably necessary to protect the public health.
  - d. The Respondent's professional performance may be reviewed by the director of the OPMC. This review may include, but shall not be limited to, a review of office records, patient records, hospital charts, and/or electronic records, as well as

interviews and/or periodic visits with the Respondent and staff at practice locations or the OPMC offices.

- e. The Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. The Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- f. The Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical record shall contain all information required by state rules and regulations regarding controlled substances.
- g. The Respondent shall comply with the Determination and Order and the New Jersey Consent Order and all the associated terms, conditions, restrictions, limitations and penalties and shall be responsible for all associated compliance costs. Upon receiving evidence of non-compliance with the Consent Order, or any violation of its terms, the director of the OPMC and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against the Respondent authorized by law.